Supreme Court, U.S.
FILED
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No. _____

In The
Supreme Court Of The United States
October Term, 1999

STEPHEN BELANGER,
Petitioner

v.

STATE OF CONNECTICUT,
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF THE
STATE OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI

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A. QUESTION PRESENTED FOR REVIEW

1. Was the petitioner's right to the presumption of innocence and the standard of reasonable doubt under the Fifth, Sixth and Fourteenth Amendments violated by the trial court's jury instruction that the reasonable doubt standard and the presumption of innocence rules were rules to protect society and the innocent and not the guilty?

B. LIST OF PARTIES

The parties are the same as in the caption of the case, to wit Stephen Belanger and the State of Connecticut.

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PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF CONNECTICUT

The Petitioner, Stephen Belanger, respectfully prays that w rit of certiorari issue to review the judgment of the Appellate Court of Connecticut rendered on September 21, 1999.

D. REFERENCE TO THE OFFICAL AND UNOFFICIAL REPORTS

The opinion of the Appellate Court of Connecticut on the petitioner's direct appeal is officially reported as State of Connecticut v. Stephen Belanger, , 55 Conn App. 2 (1999). The opinion is unofficially reported at 199 WL 730461, and is reprinted in the Appendix to this Petition. App. 1a- 1m. The petitioner's timely filed Petition For Certification was denied by the Supreme Court of Connecticut and that decision is officially reported as State of Connecticut v. Stephen Belanger, PSC-99-0166 That decision is not yet unofficially reported. It is reprinted in the Appendix to this Petition. App 2a-2b.

E. STATEMENT OF GROUNDS OF JURISDICTION

The judgment of the Appellate Court of Connecticut was

entered on September 21, 1999. The Supreme Court of Connecticut on November 18, 1999 denied the petitioner's Petition for Certification. App. 2

The jurisdiction of this Court is invoked pursuant to 28 U.S.C., Sec. 1257 (a).

F. CONSTITUTIONAL PROVISIONS

The Fifth Amendment states:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation."

The Sixth Amendment states:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

The Fourteenth Amendment states:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

G. STATEMENT OF THE CASE

Unconstitutional Jury Instruction Concerning The Presumption Of Innocence And The Standard Of Reasonable Doubt

The Petitioner was charged with the following offenses: criminal attempt at assault second degree with a firearm, in violation of Connecticut General Statutes Section 53a-49 and 53a-60a; threatening in violation of C.G.S. §53a-62; reckless Endangerment in the second degree in violation of C.G.S. § 53a-63; carrying of pistol without a permit, in violation of C.G.S. § 29-35; weapons in vehicles, in violation of C.G.S. § 29-38.

These charges stemmed from an incident that allegedly occurred on March 9, 1995 in Hartford, Connecticut wherein it was claimed that the Petitioner fired a pistol at the alleged victim who, in turn, fired a shot himself. Investigation

revealed that the Petitioner has a disassembled pistol in his possession. The Petitioner admitted ownership of the weapon for which he did not have a permit. No bullets were recovered from the scene that matched the petitioner's weapon, nor was any testing done to determine whether or not the petitioner had recently fired a firearm. In his charge to the jury, the trial court stated the following:
"It is the sworn duty of the courts and of you as jurors to safeguard the rights of persons charged with crimes by respecting the presumption of innocence which the law gives to every person charged. But the law is made to protect society and innocent persons and not to protect guilty ones." App. 3

Neither party filed an objection to this particular instruction.

On March 25, 1997, after a jury trial, the petitioner was convicted of all charges. Subsequent to that conviction, the Petitioner filed an appeal with the Appellate Court of the State of Connecticut. The appeal was based upon two claims, first, that the trial court failed to adequately instruct the jury as to the facts the State must prove regarding each and every element of the offenses charged. Second, that the trial court erred in instructing the jury that the reasonable

doubt standard and the presumption of innocence rules were rules to protect society and the innocent and not the guilty.

The appeal was denied on September 21, 1999. Whereupon, the Petitioner filed a Petition for Certification with the Supreme Court of the State of Connecticut which was denied on November 18, 1999.

H. STAGE AT WHICH FEDERAL QUESTIONS WERE RAISED

Unconstitutional Jury Instruction Concerning The Presumption Of Innocence And The Standard Of Reasonable Doubt

In its argument to the Connecticut Appellate Court, the petitioner cited to the decision of the United States Court of Appeals for the Second Circuit reversing convictions in the federal district courts due to the use of the same instructions. United States v. Doyle, 130 F.3d 523 (2d Cir. 1997). That decision held that jury instructions similar to those in this case infringed upon a defendant's due process rights and were thus unconstitutional.

The Appellate Court, in denying petitioner's appeal on this claim, cited to a recent Connecticut Supreme Court decision wherein that court, after directing the trial courts from using similar instructions, rejected that defendant's

claim. State v. Schiappa, 248 Conn. 132, 728 A.2d 466 (1999). Since the Connecticut Supreme Court's prohibition against use of this particular instruction came after petitioner's trial, the Appellate Court found that petitioner's claim was without merit. State v. Belanger, 199 WL 730461, 6, 55 Conn App. 2 (Conn. App. 1999) App. 1f.

I. ARGUMENT

In United States v. Doyle, supra, 130 F.3d 523, the Court of Appeals for The Second Circuit held that a jury instruction which stated that the presumption of innocence and the reasonable doubt standards were rules to protect society and the innocent but not the guilty was a violation of the defendant's constitutional rights under the Fifth and Sixth Amendments.

The Court's concern was that this misstatement of such important and fundamental concepts could confuse a jury and thus dilute or eradicate these rights.

The charge the Court addresses is nearly identical to that in the instant case.

The charge in Doyle:

"...it's the sworn duty of the courts and the jurors to safeguard the rights of persons charged with crimes by respecting the presumption of innocence which the law imputes to every person so charged by making the

government meet its burden of proving guilt beyond a reasonable doubt. *You must keep in mind that those rules are designed to protect the innocent and not the guilty.* If and when the presumption of innocence has been overcome by evidence proving beyond a reasonable doubt that the accused is guilty of the crime charged, then it's your sworn duty to enforce the law and render a verdict of guilty." [emphasis added] Doyle, *supra*

The charge given in this case:

"It is the sworn duty of the courts and of you as jurors to safeguard the rights of persons charged with crimes by respecting the presumption of innocence which the law gives to every person charged. *But the law is made to protect society and innocent persons and not to protect guilty ones.* If and when the presumption of innocence has been overcome by evidence proving beyond a reasonable doubt than an accused person is guilty of the crime charged then it is a sworn duty of you jurors to enforce the law and to render a verdict of guilty" [emphasis added] App. 3

The implications of these charges contradicts one of the most cherished tenets of American jurisprudence, that *all* persons are entitled to equal protection of the law. Society regards the acquittal of guilty persons less objectionable than the conviction of innocent persons.

"When this qualification [that the presumption of innocence is designed to protect the innocent and not to shield the guilty] is added to an instruction on the presumption of innocence, the result is to leave matters about where they

would have been had no instruction on the presumption been given. Since it right to instruct on the presumption of innocence, it is wrong to add this self-defeating qualification" Doyle *supra* (quoting Reynolds v. United States, 238 F.2d 460 (9th Cir. 1956))

The Court was so concerned about this particular charge that it implicitly forbade its use in the future. "We therefore reverse and remand for a new trial, with the expectation that we are not likely again to see this ill-advised language included in instructions given by district courts in this Circuit." Doyle, *supra*.

Since the United States Court of Appeals for the Second Circuit holds that it is a violation of an accused's constitutional rights to the presumption of innocence and the reasonable doubt standard for the trial court to charge the jury that these rights do not apply to guilty persons, the decision of the Appellate Court of Connecticut on this matter conflicts with United States Court of Appeals and furthermore raises an important issue of federal law which should be decided by the Court.

The Petitoner
Stephen Berlanger

By Howard I. Gemeiner
Counsel of Record for the Petitioner

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October Term, 1999

STEPHEN BELANGER,
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v.

STATE OF CONNECTICUT,
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PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF THE
STATE OF CONNECTICUT

APPENDIX

STATE OF CONNECTICUT

v.

STEPHEN BELANGER

No. 17279
Appellate Court of Connecticut
Argued March 30, 1999
Decided Sept. 21, 1999

Affirmed

Robert P. Hanahan, with whom, on the brief, was Mark Ouellette, for the appellant (defendant).

Eileen McCarthy Geel, deputy assistant state's attorney, with whom, on the brief, were James E. Thomas, state's attorney, Timoty J. Sugrue, executive assistant state's attorney, Susann E. Gill, senior assistant state's attorney, and Michael Gailor, and Marjorie Allen Dauster, assistant state's attorneys, for the appellee (state).

Before EDWARD Y. O'CONNELL, C.J., and SCHALLER and FRANCIS X. HENNESSY, JJ.

SCHALLER, J.

**1 The defendant, Stephen Belanger, appeals from the judgment of conviction, rendered after jury trial, of attempt to commit assault in the second degree with a firearm in violation of General Statues § § 53a-49 (FN 1) a and 53a-60a, (FN 2) reckless endangerment in the first degree in violation General Statutes § 53a-63, (FN 3) carrying a pistol without a permit in violation of General

Statutes § 29-35 (a),

(FN 4) having a weapon in a motor vehicle in violation of General Statutes § 29-38 (FN 5) and threatening in violation of General Statutes § 53 a-62. (FN 6) on appeal, the defendant claims that the trial court improperly (1) instructed the jury on all five counts, and (2) instructed the jury that the reasonable doubt standard and the presumption of innocence are to protect society and the innocent rather than the guilty. (FN 7) We affirm the judgment of the trial court.

The jury reasonably could have found the following facts. On the evening of March 8, 1995, and into the morning of March 9, 1995, the defendant was a customer at a bar in Hartford. At approximately 12:40 a.m., the defendant was involved in a disturbance in the bar, which was reported to the manager, Tom Neigro, by Peter Tannenbaum, an employee. Neigro then asked the defendant to leave, and the defendant did so.

Shortly thereafter, Tannenbaum heard what sounded like two people arguing outside and proceeded to investigate. Upon arriving outside, Tannenbaum saw the defendant sitting in the driver's seat of a vehicle stopped parallel to the bar with the driver's window open. The defendant was pointing a gun out the window at Dewey Carter. When Tannenbaum came out of the bar, the defendant switched the focus of the gun from Carter to Tannenbaum. Tannenbaum responded by taking cover behind a parked car and calling to the defendant to put the gun down and leave the parking lot. The defendant fired a shot at Tannenbaum. Tannenbaum fiued a warning shot into the air with his own revolver and, subsequently, fired a second shot at the defendant's vehicle. The defendant thereafter drove out of the parking lot.

The defendant's vehicle was later stopped by state troopers. In the course of the stop, Trooper Andre Joyner searched the vehicle and found a nine millimeter semiautomatic pistol disassembled into three pieces, all in different parts of the vehicle. The magazine contained live rounds of ammunition. Joynet was unable, however, to find the pistol's spring. Officer Debra Camacho of the Hartford police department also searched the defendant's vehicle and found a black holster, three live nine millimeter rounds of ammunition and a discharged nine millimeter shell casing.

At trial, both the state and the defendant submitted proposed jury instructions to the court. After the trial court instructed the jury, both parties took exceptions. Subsequently, the trial court clarified its instructions to the jury. The following day, the jury found the defendant guilty on all counts. This appeal followed.

**2 The defendant first claims that the trial court improperly instructed the jury on all five counts. We are not persuaded.

Of the instructions challenged by the defendant, his claims with respect to three counts were properly preserved in the trial court for our review, while claims with respect to two counts were not preserved. (FN8)

A

Preserved Claims

Our standard of review concerning preserved claims of improper jury instruction is well settled. "The charge is to be read as a whole and individual instructions are not to be judged in artificial isolation from the overall charge ....

The test to be applied to any part of a charge is whether thecharge, considered as a whole, presents the case to the jury so that no injustice will result .... While the instructions need not be exhaustive, perfect or technically accurate, they must be correct in law, adapted to the issues and sufficient for the guidance of the jury." (Internal quotation marks omitted.) *State v. Rodriguez*, 47 Conn. App. 91, 95, 702 A.2d 906 (1997), cert. denied, 243 Conn. 960, 705 A.2d 552 (1998).

The defendant claims that with respect to the count of criminal attempt to commit assault in the second degree with a firearm, the trial court improperly failed to instruct the jury that it must find that (1) the defendant was in possession of the gun in assembled condition on March 9, 1995, and (2) the defendant pointed or fired it in the vicinity of a person. We are not persuaded.

The trial court instructed the jury as follows: "If you determine that the firearm was not operable at the time of the incident then you must find the defendant not guilty [of the charge of criminal attempt to commit assault in the second degree with a firearm]." This instruction clearly informed the jury that it must determine whether the gun was assembled and operable, or dismantled and inoperable, at the time of the incident.

Regarding whether the jury was instructed adequately concerning the presence of a victim, as required by General Statutes § 53a-60, (FN9) a review of the charge reveals that the trial court, in instructing the jury, set forth each element of § 53a-60a as well as the elements necessary under § 53a-60. Together, these instructions made it clear that the jury must find that there was a victim. Moreover, the instructions

as a whole adequately apprised the jury of its duty to find all of the elements of this offense beyond a reasonable doubt in order to convict the defendant on this count. We conclude that, viewing the charge as a whole, the trial court's instruction on the count of criminal attempt to commit assault in the second degree with a firearm fairly and accurately informed the jury of the elements of this offense, thereby avoiding any injustice to the defendant.

The defendant next claims that the trial court improperly instructed the jury with respect to the count of carrying a pistol without a permit. Specifically, the defendant argues that the trial court improperly failed to instruct the jury that it must find that the gun had a barrel measuring less than twelve inches in length. We disagree.

**3 The record shows that the trial court did, in fact, instruct the jury on the requisite length of the barrel and on the jury's duty to find whether the defendant's gun qualified under the statute beyond a reasonable doubt. (FN10) We conclude, therefore, that the trial court's instruction on the count of carrying a pistol without a permit was not deficient and, further, when viewed in light of the entire charge, was a fair representation of the issues to the jury, thus avoiding any injustice to the defendant.

3

The defendant claims next, with respect to the count of having a weapon in a motor vehicle, that the trial court improperly failed to instruct the jury that to convict the defendant it must find that he had a weapon, assembled or unassembled, in his vehicle at the time of the incident. The defendant's claim lacks merit.

The trial court instructed the jury as to all of the elements of this count and as to its duty to find them all beyond a reasonable doubt before convicting the defendant. Also, viewing the trial court's charge as a whole, we note that our discussion in part I A 1 concerning the operability of the gun responds to the defendant's argument. Accordingly, we conclude that the trial court's instruction as to having a weapon in a motor vehicle fairly represented the case to the jury so as to avoid any injustice to the defendant.

B

Unpreserved Claims

"To preserve a challenge to the jury charge, the defendant must make a written request to charge, or take exception to the jury instructions when they are given by the trial court .... This court is not bound to review claims of instructional error if the party raising the claim neither submitted a written request to charge, nor excepted to the charge given by the trial court. Practice Book § [42-16]. The purpose of [§ 42-16] is to alert the court to any claims of error while there is still an opportunity for correction in order to avoid the economic waste and increased court congestion caused by unnecessary retrials." (Internal quotation marks omitted.) *State v. Adorno,* 45 Conn.App. 187, 196-97, 695 A.2d 6, cert. denied, 242 Conn. 904, 697 A.2d 688 (1997).

With respect to the counts of reckless endangerment and threatening, the defendant neither objected to the trial court's instructions nor submitted proposed jury instructions in a manner adequate to preserve the claims he now makes. He contends, however, that his claims meet the criteria of *State v. Evans,* 165 Conn. 61, 327 A.2d 576 (1973), as refined by *State v. Golding,* 213 Conn. 233, 239-40, 567 A.2d 823 (1989).

"Under *Golding,* a defendant can prevail on a claim of constitutional error not preserved at trial only if all of the following conditions are met: (1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation clearly exists and clearly deprived the defendant of a fair trial; and (4) if subject to harmless error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt. In the absence of any one of these conditions, the defendant's claim will fail. The appellate tribunal is free, therefore, to respond to the defendant's claim by focusing on whichever condition is most relevant in the particular circumstances." (Internal quotation marks omitted.) *State v. Lasky,* 43 Conn.App. 619, 631-32 n. 5, 685 A.2d 336 (1996), cert. denied, 239 Conn. 959, 688 A.2d 328 (1997). We conclude that the record is adequate for review and that claims of inadequate instruction on the elements of a crime are of constitutional magnitude alleging the violation of a fundamental right. See *State v. Owens,* 25 Conn.App. 181, 186 n. 2, 594 A.2d 991, cert. denied, 220 Conn. 910, 597 A.2d 337 (1991). We will proceed, therefore, to examine the defendant's claims to determine whether the alleged violations clearly exist and clearly deprived him of a fair trial.

**4 We note that under *Golding,* an unpreserved constitutional claim of instructional error will fail if, considering the substance of the charge rather than the form of what was said, it is not reasonably possible that the jury was misled. See *State v. Adorno,* supra, 45 Conn.App. 198.

"In determining whether the jury was misled, it is well established that Ia] charge to the jury is not to be critically dissected for the purpose of discovering probable inaccuracies of statement, but is to be considered rather as to

its probable effect upon the jury in guiding them to a correct verdict in the case .... The charge is to be read as a whole and individual instructions are not to be judged in artificial isolation from the overall charge .... The test to be applied to any part of a charge is whether the charge, considered as a whole, presents the case to the jury so that no injustice will result .... Furthermore, [al jury instruction is constitutionally adequate if it provides the jurors with a clear understanding of the elements of the crime charged, and affords them proper guidance for their determination of whether those elements were present." (Internal quotation marks omitted.) Id.

The defendant's first unpreserved claim of improper jury instruction is that with respect to the count of reckless endangerment, the trial court improperly failed to instruct the jury that to convict it must find that the defendant pointed a weapon out the window of his car and discharged it in such a manner or direction as to endanger an identifiable person. We disagree.

Our review of the trial court's entire instruction reveals that it provided the jury with the elements of the crime, a clear understanding of the these elements and ample guidance on how to determine their presence. The instructions regarding the crime of reckless endangerment were, therefore, constitutionally adequate.

The defendant's second unpreserved claim of improper jury instruction attacks the adequacy of the instruction on the count of threatening. The defendant claims that the trial court improperly failed to instruct the jury that it must find that the defendant threatened an identifiable person. We are not persuaded.

The record shows that the trial court carefully instructed the jury on each element of the crime of threatening, as well as on the three ways in which it can be committed. Furthermore, the balance of the whole charge gave the jury sufficient guidance as to its duty as the finder of fact. Accordingly, we conclude that the trial court's instructions with respect to this count were constitutionally adequate and that the alleged constitutional error did not clearly exist.

II

The defendant claims finally that the trial court improperly instructed the jury that the reasonable doubt standard and the presumption of innocence are to protect society and the innocent rather than the guilty. (FN ll) We do not agree.

**5. Our Supreme Court consistently has held that jury instructions essentially the same as the ones used here do not confuse juries. See, e.g., *State v. Faust,* 237 Conn. 454, 477-78, 678 A.2d 910 (1996); *State v. Cassidy,* 236 Conn. 112, 145, 672 A.2d 899, cert. denied, 519 U.S. 910, 117 S.Ct. 273, 136 L.Ed.2d 196 (1996); *State v. Palmer,* 196 Conn. 157, 168-69, 491A.2d 1075 (1985)

In support of his argument for a divergence from these precedents, the defendant relies on a recent decision of the United States Court of Appeals for the Second Circuit that reversed convictions due to the federal district court's use of the same instructions. See *United States v. Doyle,* 130 F.3d 523 (2d Cir.1997). In the wake of *Doyle,* our Supreme Court has considered whether an instruction essentially the same as that challenged by the defendant violates a defendant's due process rights. *State v. Schiappa,* 248 Conn. 132, 167-68, 728 A.2d 466 (1999). "Although the court in *Schiappa* disapproved of the challenged language and, pursuant to its supervisory authority over the administration of justice,

directed our trial courts to refrain from using the challenged language in future cases, the court nevertheless rejected the defendant's constitutional claim based on the particular instructions given in that case." *State v. Ryan,* 53 Conn.App. 606, 610, 733 A.2d 273 (1999).

In this case, judgment was rendered in 1997, prior to our Supreme Court's decision in *Schiappa.* Because the particular portion challenged by the defendant is essentially the same as that considered in *Schiappa,* our decision on this issue is controlled by *Schiappa,* and the defendant's claim must fail.

The judgment is affirmed.

In this opinion the other judges concurred.

FN 1. General Statutes § 53a-49 provides in relevant part: "(a) A person is guilty of an attempt to commit a crime if, acting with the kind of mental state required for commission of the crime, he: (1) Intentionally engages in conduct which would constitute the crime if attendant circumstances were as he believes them to be; or (2) intentionally does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

"(b) Conduct shall not be held to constitute a substantial step under subdivision (2) of subsection (a) of this section unless

it is strongly corroborative of the actor's criminal purpose .. "

FN 2. General Statutes § 53a-60a provides in relevant part: "(a) A person is guilty of assault in the second degree with a

firearm when he commits assault in the second degree as provided in section 53a-60, and in the commission of such offense he uses or is armed with and threatens the use of or displays or represents by his words or conduct that he possesses a pistol, revolver, machine gun, shotgun, rifle or other firearm. No person shall be found guilty of assault in the second degree and assault in the second degree with a firearm upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information .... "

FN 3. General Statutes § 53a-63 provides in relevant part: "(a) A person is guilty of reckless endangerment in the first degree when, with extreme indifference to human life, he recklessly engages in conduct which creates a risk of serious physical injury to another person .... "

FN 4. General Statutes § 29-35(a) provides in relevant part: "No person shall carry any pistol or revolver upon his person, except when such person is within his dwelling house or place of business, without a permit to carry the same .... "

FN 5. General Statutes § 29-38 provides in relevant part: "Any person who knowingly has, in any vehicle owned, operated or occupied by him, any weapon for which a proper permit has not been issued as provided in section 29-28 or section 53-206, or has not registered such weapon as required by section 53-202, as the case may be, shall be fined not more than one thousand dollars or imprisoned not more than five years or both, and the

presence of any such weapon in any vehicle shall be prima facie evidence of a violation of this section by the owner, operator and each occupant thereof. The word 'weapon', as

used in this section, means any pistol or revolver .... "

FN 6. General Statutes § 53a-62 (a) provides: "A person is guilty of threatening when: (1) By physical threat, he intentionally places or attempts to place another person in fear of imminent serious physical injury, or (2) he threatens to commit any crime of violence with the intent to terrorize another, to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or

(3) he threatens to commit such crime in reckless disregard of the risk of causing such terror or inconvenience."

FN 7. In his brief, the defendant also seems to make several claims of insufficient evidence. We decline, however, to review those claims as they are inadequately briefed. See *State v. Henderson*, 47 Conn.App. 542, 558, 706 A.2d 480, cert. denied, 244 Conn. 908, 713 A.2d 829 (1998).

FN 8. A claim of inadequate jury instruction is unpreserved unless the matter is covered by a written request to charge or exception has been taken by the party appealing immediately after the charge is delivered. See Practice Book 42-16, formerly § 852.

FN 9. Section 53a-60a requires, inter alia, an assault in the second degree as provided in General Statutes § 53a-60, which provides in relevant part: "(a) A person is guilty of assault in the second degree when: (1) With intent to cause

serious physical injury to *another person*, he causes such injury to such person or to a third person; or (2) with intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a

deadly weapon or a dangerous **5. instrument other than by means of the discharge of a firearm; or (3) he recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument .... " (Emphasis added.) See footnote 2.

FN10. Specifically, the trial court instructed: "The defendant is also charged with unlawfully carrying a pistol without a permit in violation of 29-35(a) of the Connecticut General Statutes .... For you to find the defendant guilty of this crime, *you must find that the state has proven beyond a reasonable doubt* that the defendant carried a pistol upon his person, that the defendant did so while outside his dwelling house or place of business and that the defendant did not have a valid permit to carry that pistol .... Of course, *you must find that what the defendant held upon his person was a pistol. A pistol is defined in the statute as a firearm having a barrel less than twelve inches in length."* (Emphasis added.)

FN 11. The trial court instructed: "It is the sworn duty of the courts and of you as jurors to safeguard the rights of persons charged with crimes by respecting the presumption of innocence which the law gives to every person charged. *But the law is made to protect society and innocent persons and not to protect guilty ones.* If and when the presumption of innocence has been overcome by evidence proving beyond a reasonable doubt that an accused person is guilty of the crime charged, then it is the sworn duty of you, the jurors, to enforce the law and to render a verdict of guilty." (Emphasis added.)

SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-99-0166

State of Connecticut
v.
Stephen Belanger

ORDER ON PETITION FOR CERTIFICATION TO APPEAL

On consideration of the petition by the defendant for certification to appeal from the Appellate Court (55 Conn. App. 2 [AC 17279]), it is hereby ordered that said petition be, and the same is hereby denied.

Berdon, J., dissenting. I would grant the defendant's petition for certification to appeal.

Norcott, J., did not participate in the consideration or decsiion of this petition for certification.

BY THE COURT,

ALAN M. GANNUSCIO
ASSISTANT CLERK-APPELLATE

Dated: November 18, 1999
Notice sent: November 18, 1999
Clerk, Superior Court, Hartford at G.A. 14 CR95 469919

Clerk, Appellate Court
Report of Judicial Decisions
SAO
Howard I. Gemeiner
Mark G. Ouellette
Office of the Chief State's Attorney-Appellate Bureau

Howard I. Gemeiner in support of petition; Eileen McCarthy Geel, Assistant State's Attorney, in opposition

PORTION OF TRIAL TRANSCRIPT
STATE V. STEPHEN BELANGER

Pages 100-101
"It is the sworn duty of the courts and of you as jurors to safeguard the rights of persons charged with crimes by respecting the presumption of innocence which the law gives to every person charged. But the law is made to protect society and innocent persons and not to protect guilty ones. If and when the presumption of innocence has been overcome by evidence proving beyond a reasonable doubt than an accused person is guilty of the crime charged then it is a sworn duty of you jurors to enforce the law and to render a verdict of guilty"